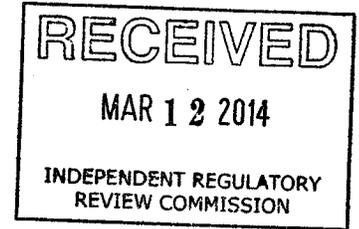


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TESTIMONY OF STEPHANIE C. WISSMAN

EXECUTIVE DIRECTOR



ASSOCIATED PETROLEUM INDUSTRIES OF PENNSYLVANIA

PROPOSED CHAPTER 78 RULEMAKING

JANUARY 27, 2014

TUNKHANNOCK HIGH SCHOOL AUDITORIUM

TUNKHANNOCK, PA

Good evening. My name is Stephanie C. Wissman, executive director of the Associated Petroleum Industries of Pennsylvania (API-PA). API-PA is pleased to offer comments on the Notice of Proposed Rulemaking, Proposed Amendments to Pa. Code § 78 (Relating to Oil and Gas Wells) as published in the Pa. Bulletin on December 14, 2013.

API-PA is a division of the American Petroleum Institute (API), a national trade association that represents all segments of America's technology-driven oil and natural gas industry. Its more than 580 members – including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide most of the nation's energy and are backed by a growing grassroots movement of over 15 million Americans. The industry also supports 9.8 million U.S. jobs and 8 percent of the U.S. economy, delivers \$85 million a day in revenue to our federal government, and, since 2000, has invested over \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. Many of our members have a direct interest in this notice of proposed rulemaking.

API is also a standard setting organization. For 89 years, API has led the development of petroleum and petrochemical equipment and operating standards. These standards represent the industry's collective wisdom on everything from drill bits to environmental protection and embrace proven, sound, engineering and operating practices and safe, interchangeable equipment and materials for delivery of this important resource to our nation. API maintains more than 650 standards and recommended practices. Many of these are incorporated into state and federal regulations; and increasingly, they're being adopted by the International Organization for Standardization. API encourages and participates in the development of state regulations that are protective of the public, the environment and the industry workforce. In this context, API offers the following comments and looks forward to continuing to work with DEP in the development of these Chapter 78 regulations.

Although wells have been hydraulically fractured for more than 60 years, thanks to industry innovation and technological advancements, shale formations across the country that were previously "stranded resources" are now productive due to the combination of horizontal drilling and hydraulic fracturing. Shale formations including the Marcellus have produced 1.4 trillion cubic feet of natural gas during the first 6 months of 2013, supporting national energy security. Pennsylvania's contribution in this success story is demonstrated by the fact that Pennsylvania supplied 8.8% of the nation's demand for natural gas in 2012. This renaissance has not taken place in a vacuum. All aspects of the oil and natural gas industry have been and continue to be highly regulated. Since the outset of increased activity in PA, DEP and other regulatory agencies have put into place additional regulatory requirements that reflect the technological changes that have taken place in the industry. Over the last several years, DEP has put into place more stringent regulations relating to well construction and casing. Act 9 of 2012, and the

corresponding regulations already incorporated into Chapter 78, require emergency response safety measures at unconventional drill sites. Act 13 of 2012 provided for enhanced water protections, well setbacks and casing standards. Other regulatory measures include enhanced general permits for air and more stringent exemption criteria, discharge changes prohibiting municipal wastewater treatment plants from accepting oil and gas waste fluids, and increased recycling of produced water.

The State Review of Oil & Natural Gas Environmental Regulations (STRONGER), a national non-profit organization charged with assessing states' oil and gas regulations, reviewed Pennsylvania's oil and gas regulatory program in May 2013 at the request of the DEP. STRONGER released their report in September 2013 finding that Pennsylvania's program "is, over all, well-managed, professional and meeting its program objectives." Key excerpts from the report include:

- The review team commends DEP for increasing its staff levels to address additional permitting, inspection and enforcement activities related to increased unconventional gas well development. Over the past four years, as unconventional gas well development has increased in Pennsylvania, the Office of Oil and Gas Management has increased its staff from 64 to 202 employees.
- DEP is commended for initiating a comprehensive evaluation of radiation levels specifically associated with unconventional gas development. This TENORM study is the first of its kind in the nation.
- DEP is commended for its hydraulic fracturing program. Standards for well casing and cementing require that the operator conduct those activities to control the well at all times; prevent migration of gas or other fluids into sources of fresh groundwater; and prevent pollution of fresh groundwater.

API-PA supports strong environmental safeguards and stewardship, and commends DEP on their regulatory oversight program; however we do have concerns with several provisions contained in the proposed rulemaking that we plan to outline in detail in our formal written comments to the Department. In the interest of time, I will highlight some general comments that we have and also provide a few suggestions of how to better define some of the terms included in the proposed rulemaking.

General Comments

Due to the wide-ranging impact these revisions will have on oil and gas operations it is important for industry to know if these new provisions will apply to existing wells and previously approved water management plans or sources. We suggest language be added to clarify the effective date for the new requirements in Subchapter C and that wells constructed prior to that date are grandfathered in for purposes of the new requirements.

There are a number of definitions and sections of text that refer the reader to other statutes or regulations. This causes the reader to search elsewhere to find that

other statute or regulation and review it before being able to understand what Chapter 78 requires. This is not user friendly and does not facilitate regulatory understanding and compliance. For example, it would be better to state, "As defined in 25 Pa. Code § XXX.X," and repeat the definition or section. This should be done for the definitions of body of water, PCSM plan, process or processing, regulated substance, watercourse, water purveyor, and wetland. It should also be done for §78.51(d)(2), § 78.57(f), §78.65 (d)(1)(v), § 78.66 (a)(2), §78.66 (c)(1), 78.68a(k), 78.69(b) and numerous other sections.

Separately, a number of sections are very detailed and prescriptive. We suggest that these sections be given some flexibility to allow for the use of alternate methods as approved by the Department. These sections include § 78.59a. Impoundments and Embankments, § 78.59b. Freshwater Impoundments, § 78.59c. Centralized Impoundments, § 78.60. Discharge Requirements, § 78.61. Disposal of Drill Cuttings, § 78.62. Disposal of Residual Waste – Pits, § 78.63. Disposal of Residual Waste – Land Application, § 78.64a. Containment Systems and Practices at Unconventional Well Sites, § 78.65. Site Restoration, § 78.66. Reporting and Remediating Releases, § 78.68. Oil and Gas Gathering Lines, § 78.68a Horizontal Directional Drilling for Oil and Gas Pipelines, § 78.68b. Temporary Pipelines for Oil and Gas Operations § 78.70. Road-Spreading of Brine for Dust Control and Road Stabilization, and § 78.70a. Pre-Wetting, Anti-Icing and De-Icing. There may be additional sections where it would be advantageous to both the Department and the operator to apply the same concept.

Definitions

§ 78.1. Definitions – approximate original conditions - The definition talks about "original land uses." Land use is outside of the DEP's jurisdiction to regulate and is largely an issue to be resolved between the Lessor and the Operator.

§ 78.1. Definitions – centralized impoundment, number (ii) – This definition talks about "... the escape of which may result in air, water or land pollution ..." It is interesting to note that the oil and gas program regulations propose to contain air pollution controls. This reference to air pollution should be deleted or should be carefully considered, especially in light of recently promulgated federal air rules found at 40 CFR Part 60 Subpart OOOO which will be implemented by the air quality program, BAQ-GP-5 and the Air Quality Permit Exemption List Categories 33 and 38.

In addition, we suggest that language be added to clarify that this definition does not include secondary containment or impoundments at well sites. The language should also clarify that a "centralized impoundment" does not include freshwater impoundments.

§ 78.1. Definitions – gathering pipelines – This definition is not consistent with the Department of Transportation definition of a "gathering line" at 49 C.F.R. § 192.3. To avoid confusion, we suggest that the DEP rules simply use the DOT definition.

§ 78.1. Definitions – mine influenced water - We suggest that the second sentence be deleted. The first sentence captures any relevant discharges to surface waters from mining activities. The term “mine influenced water” should not also include the entire surface water body into which those discharges occur, as the second sentence implies.

§ 78.1. Definitions – oil and gas operations, number (v) – The definition talks about “earth disturbances associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.” These activities, after the construction phase, do not involve earth disturbances. We suggest that this be changed to read, “earth disturbances associated with oil and gas exploration and the construction of facilities for production, processing ...”

In addition, it is noted that this definition differs slightly from the same definition in the Oil and Gas Act. We suggest that the definition be kept consistent with the statutory term rather than create confusion on what that term means when it is used by the Department.

§ 78.1. Definitions – pit – We recommend that language be added to clarify that this definition does not include secondary containment or impoundments at well sites.

§ 78.1. Definitions – temporary pipelines – This definition is unclear. What differentiates a temporary pipeline from any other pipeline?

§ 78.1. Definitions – water source, (i) – The first term, waters of the Commonwealth, encompasses the following three sources of water. It is suggested that it read, “Waters of this Commonwealth, including” and then go on to list the other sources.

Thank you for the opportunity to testify this evening. API-PA and its member companies stand ready to continue to work with DEP on striking a balance between environmental protection and economic development.